IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1483 OF 2004.

Naresh Hiralal Rathod. ... Petitioner
Versus.
The Deputy Commissioner of Police
and another. ... Respondents.

Shri Gajendra Jadhav for the Petitioner.

Shri K.V.Saste, A.P.P.for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 20th June, 2005.

ORAL JUDGMENT.:

1. Heard the learned Counsel appearing for the parties.

2. The challenge in this petition under Article 227 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973, is to the order of externment passed against the Petitioner under section 56(a) (b) of the Bombay Police Act, 1951.

3. The allegation made in the show cause notice issued under section 59 of the said Act of 1951 is based on two offences registered against the Petitioner and in-camera statements of three witnesses. In clause 1 of the show cause notice it is alleged that the objectionable activities of the Petitioner are going on in the area of Sun Mill Lane, Sitaram Jadhav Marg, Lower Parel within the jurisdiction of N.M.Marg Police

Station, Mumbai and in the adjoining areas. The first case registered against the Petitioner is under sections 387, 364(A), 326, and 34 of the Indian Penal Code. The said case relates to the incident of the year 2000-2001 which has taken place at Sun Mill Lane within the jurisdiction of N.M.Marg Police Station. The second case registered against the Petitioner is under section 324 registered at the Worli Police Station which relates to the incident dated 23rd January 2003. The alleged offence has been committed within the jurisdiction of the Worli Police Station, Mumbai. The incidents which are narrated in in-camera statements of the three witnesses have allegedly occurred within the jurisdiction of the N.M.Marg Police Station. By the said notice the Petitioner was called upon to show cause why he should not be externed from Greater Mumbai, Thane and Raigad Districts. After reply was filed by the Petitioner, an order of externment was passed for a period of two years for externing the Petitioner from the said three Districts. The statutory appeal preferred by the Petitioner has been dismissed.

4. The learned Counsel for the Petitioner has relied upon various decisions of this Court to which reference will be made at a later stage. His submission is that the activities of the Petitioner are allegedly confined mainly to the area falling within the jurisdiction of N.M.Joshi Marg Police Station and the Worli Police

Station and therefore, order of externment from the adjoining districts is excessive. He submitted that the first offence on the basis of which show cause notice is issued is of May 2001 and on the basis of such offence show cause notice could not have been issued in June 2003 and order of externment could not have been passed in January 2004. He submitted that thus the notice will have to be treated as issued only on the basis of one case registered against the Petitioner which is not permissible in law. He submitted that there is delay of about six months in passing the order of externment from the date of show cause notice. He submitted that the order of externment is therefore vitiated.

5. Shri Saste, the learned A.P.P. has relied upon the decision of the Apex Court in the case reported in (1973) 1 S.C.C. 372 (Pandharinath Shridhar Rangnekar v/s. Deputy Commissioner of Police, The State of Maharashtra), to which reference will be made later on. He submitted that though allegation regarding prejudicial activities of the Petitioner is confined the area within the limits of two Police Stations in Greater Bombay, considering the availability of very fast and effective mode of conveyance between Mumbai and the adjoining Districts, the order of externment is justified. He submitted that Thane District is connected with the industrial area of Greater Mumbai with cheaper and quicker means of transport and the

Districts of Greater Mumbai and Thane for all practical purposes are one local area or one district. He submitted that the notice is based on two F.I.Rs and three in-camera statements. He submitted that there is no unreasonable delay in passing the order of externment and therefore, no interference is called for.

6. I have considered the rival submissions.

7. It appears that three in-camera statements have been recorded and one F.I.R. has been registered against the Petitioner relating to the alleged offence committed within the limits of N.M.Joshi Marg Police Station at Mumbai and the other F.I.R. relates to the alleged incident which has taken place within the limits of another police station i.e. Worli Police Station.

8. It will be necessary to refer to the decision of the Apex Court in the case of Pandharinath (supra). The Apex Court was dealing with an order of externment where the activities of the externee were confined to the specific area within the jurisdiction of Vile Parle Police Station, Mumbai, and order of externment was passed regarding the entire districts of Greater Mumbai, and the entire District of Thane. The Apex Court in paragraph 17 held thus:

"17. But Balu Shivling's case (supra)

furnishes no analogy in the instant matter. A vast city like Bombay presents its own peculiar problems of law and order. It has an over-growing industrial complex and the city has spread its arms far and wide. A fair proportion of its teeming population is mobile, with large multitudes streaming in and out of the city in the pursuit of their daily avocations. An order of externment restricted to the particular area chosen by the externee for his unlawful activities and to a small periphery thereof would in such circumstances fail of its true purpose. It would be impossible to secure obedience to such an order and its enforcement would raise practical problems which would impair the efficacy of the order. An order in the instant case if restricted, say, to the area within the jurisdiction of the Vile Parle Police Station and its periphery would not serve its purpose. Rather than solving a problem of law and order, it would create yet one more."

The Apex Court relied upon its earlier Judgments and in paragraph 20 and held thus:

"20. These Judgments of the Bombay High

Court have taken the view that the districts of Greater Bombay and Thana form, so to say, a single unit. Palekar, J. observes in his judgment in Criminal Applications Nos.30 and 93 of 1970: "It may be that the area of operation may be in a particular locality, but if the externment is limited only to that area, then it might be impossible to prevent the externee from visiting that area every day. Any part in Bombay is easily connected by transport with any other part of Greater Bombay and also the Thana District, and if, for example, an externee is externed outside the limits of Greater Bombay, then he should not take more than 15 minutes to reach Kurla from a place like Thana if the latter is excluded from externment. The very object of externment is to make it as difficult as possible to the externee to return to the field of his activities." Tulzapurkar, J., expressed the same view by saying that "the contiguous area of Thana District is intimately connected with the industrial area of Greater Bombay with cheaper and quicker means of transport and communication." According to Bhasme, J., who delivered the judgment of the Bench in Criminal Application No.149 of 1972, "By reason of the means of

> communication and proximity, the districts of Greater Bombay and Thana are for all practical purposes one local area or one district." Deshmukh,J., in the judgment under appeal, says that "Greater Bombay and Thana District are ..... intimately connected by several communications". In matters of local colour and conditions the view so consistently expressed by the learned Judges of the High Court must, in our opinion, be accepted as correct."

9. A Division Bench of this Court had an occasion to consider the decision of the Apex in Pandharinath's case (supra). In a Judgment reported in 2000 All Mah. Reporter (Cri) page 578 (Umar Mohamed Malbari v/s. K.P.Gaikwad, Dy.Commissioner of Police & anr.), this Court held that when the activities of the externee were confined the locality in Thane District, his externment from adjoining Districts of Raigad and Nashik is excessive and violative of Article 19 of the Constitution. Paragraph 7 of the decision of the Division Bench shows that the decision of the Apex court in the case of Pandharinath was considered by the Division Bench. The Division Bench held that as the activities of the externee were confined to a locality in Thane District, his externment from the adjoining

Districts of Raigad and Nashik was excessive.

10. It will be necessary to refer to another decision of this court reported in 2000 All. M.R. page 577 (Ashok Shinvar Mali v/s. Sub-Divisional Magistrate & Ors.). It was a case wherein activities of the externee were confined to Thane District and this Court held that the externment from the adjoining five Districts was excessive. Same is the view taken by another learned Single Judge of this Court in a Judgment reported in 2003 All.M.R. page 2023 (Kishor Rajaram Durge v/s. The Deputy Commissioner of Police & ors.). Another learned Single Judge of this Court in a Judgment reported in 2001 (3) Mh.L.J. page 926 (Punjaji Dagdu Gaikwad v/s. State of Maharashtra & others) was dealing with the order of externment where the activities of the Petitioner were confined to Buldhana District, but the Petitioner in that case was externed from the adjoining four Districts. The said order was held to be bad in law on the ground that the same was excessive. The learned Single Judge while deciding the said matter has referred to the decision of the Apex Court in the case of Pandharinath.

11. As held by the Apex Court in the case of Pandharinath, it is possible to say that the main District of Bombay is well connected by transport with other part of Greater Bombay as also with the District

Thane. In the present case, the order of externment passed has the effect of externing him from the Districts of Thane and Raigad Districts. In my view in the absence of application of mind on the part of the authority as far as Raigad District is concerned, there is no reason why the decision of the Division Bench in the case of Umar Mohamed Malbari should be followed. The areas within the jurisdiction of N.M.Marg Police Station and Worli Police Station are certainly far away from the District of Raigad. From the said areas it is not possible to reach District Raigad unless travelling is undertaken for minimum two hours. There is no data referred to in the order of externment which warrants the externment of the Petitioner even from the Raigad District.

12. Thus the only conclusion is that the externment order is excessive so far as the Districts of Raigad is concerned. It is well settled that this Court cannot correct excessive order and confine it to a particular area. Hence the order will have to be quashed and set aside. This order will not preclude the concerned authorities from taking appropriate action against the Petitioner in accordance with the law. Accordingly I pass the following order:

(i) Rule issued in this petition is made absolute in terms of prayer clause (b).

(ii) The order of externment dated 30th January 2004 passed by the Deputy Commissioner of Police, Circle-III, Byculla, Mumbai, bearing No.22/C/43/Pari-3/2004 against the Petitioner Naresh Hiralal Rathod is quashed and set aside.

(iii) Parties to act on authenticated copy of this order.

Judge.